

1
2
3
4
5
6
7 **THE DISTRICT COURT OF GUAM**
8

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 DAVID QUICHOCHO UNCANGCO, JR.,

13 Defendant.
14

CRIMINAL CASE NO. 13-00059

CIVIL CASE NO. 16-00057

**ORDER ON MOTION TO VACATE, SET
ASIDE, OR CORRECT SENTENCE**

15 Defendant David Quichocho Uncangco, Jr., was convicted of two counts of Hobbs Act
16 Robbery, 18 U.S.C. § 1951(a), and one count of using, carrying, and brandishing a firearm during a
17 crime of violence, 18 U.S.C. § 924(c)(1)(A)(ii). (Judgment, ECF No. 33.)¹ He has now filed a motion
18 to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. (ECF No. 40.)

19 In his Plea Agreement, Defendant waived “any right to appeal or to collaterally attack any
20 aspect of his conviction or sentence” except for claims of “ineffective assistance of counsel, alleged
21 involuntariness of the Defendant’s guilty plea, or alleged prosecutorial misconduct.” (Plea Agr., ECF
22

23 ¹ All references to ECF docket entries are to entries made in Case No. 13-cr-00059.
24

1 No. 11.) Because Defendant's motion to vacate does not allege ineffective assistance of counsel,
2 involuntariness of his guilty plea, or prosecutorial misconduct, the motion is barred by the terms of his
3 Plea Agreement.

4 Accordingly, Defendant's motion to vacate, set aside, or correct a sentence (ECF No. 40) is
5 DENIED. The Report and Recommendation (ECF No. 46) and Amended Report and
6 Recommendation (ECF No. 47) are **NOT ADOPTED**, and Defendant's objections to the R&R (ECF
7 No. 48) are **OVERRULED**.

8 To obtain a certificate of appealability, a Petitioner must make a "substantial showing of a
9 denial of a constitutional right." *Slack v. McDaniel*, 529 U.S. 473, 481 (2000). This standard is met
10 when "reasonable jurists could debate whether . . . the petition should have been resolved in a different
11 manner." *Welch v. United States*, ___ U.S. ___, 136 S. Ct. 1257, 1259 (2016). Here, the Court finds
12 that reasonable jurists would not disagree with or debate the conclusion that Petitioner is not entitled
13 to relief. Accordingly, a certificate of appealability is **DENIED**.
14

15 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Jun 28, 2018